

ENTERED

September 16, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION****UNITED STATES OF AMERICA**

§

VS.

§

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CRIM. ACTION NO. 5:19-CR-00912

§

ENEIDA GARZA-GONZALEZ

§

MEMORANDUM & ORDER GRANTING MOTION TO SUPPRESS

Pending before the Court is Defendant Eneida Garza-Gonzalez's "Motion to Suppress Stop And Evidence" ("Motion") that argues a United States Border Patrol agent performed a roving patrol stop on June 12, 2019 without reasonable suspicion of criminal activity, in violation of Defendant's Fourth Amendment rights. (Dkt. 25 at 3.) After stopping Defendant's vehicle and performing an immigration inspection, the agent discovered four passengers who were determined to be illegally present in the United States without documentation. (Dkt. 5.) Defendant has been charged with violations of Title 8, United States Code, Section 1324 for transporting undocumented aliens within the United States. (*Id.*)

In her Motion, Defendant seeks to suppress the evidence obtained from the allegedly illegal detention and search. (Dkt. 25 at 5.) The Government opposed the Motion in their Response (Dkt. 27), and the Court held a suppression hearing (Hrg.) on August 22, 2019.

Factual Background

On the morning of June 12, 2019, United States Border Patrol Agent Jose Gonzalez was assigned to the area north of Zapata, Texas in the town of San Ygnacio, Texas on United States Highway 83 ("Highway 83"). (Hrg. 11:02.) According to Agent Gonzalez, alien and contraband smugglers often use Highway 83 to avoid detection as they travel further up through Texas (*Id.* at 11:00), but it is also a "main road" and the "most direct route" from the Rio Grande Valley to

Laredo, Texas (*Id.* at 11:28–29).

Agent Gonzalez has been with the U.S. Border Patrol for eleven years, throughout which he has been assigned at the Zapata Border Patrol Station. (Hrg. 10:55.) Prior to his work as a border patrol agent, Agent Gonzalez served for seven years in the United States Army as an infantryman and drill sergeant. (*Id.* at 10:55–56.) He has an associate degree in healthcare management and a bachelor’s degree in psychology. (*Id.* at 10:57.) Currently, he is working on a master’s degree in mental health counseling. (*Id.*) With the exception of brief details in other areas, including the Rio Grande Valley and Laredo, Agent Gonzalez’s entire border patrol career has been in the Zapata area. (*Id.* at 10:55) As part of his duties with the Border Patrol, Agent Gonzalez instructed other agents on the use of force as well as checkpoint and vehicle interdiction operations related to alien interdiction and human smuggling prevention. (*Id.* at 10:56–57.) He would also train agents how to detect suspicious activity. (*Id.* at 10:57.)

Agent Gonzalez has been involved in over one hundred alien smuggling cases, with a yearly average of about thirty cases. (*Id.* at 10:57–58.) He testified that he is familiar with the area and traffic patterns around San Ygnacio, which is about one mile from the U.S.-Mexico Border. (*Id.* at 10:58, 11:00). According to Agent Gonzalez, usually “locals” or the “population from Zapata” drive around San Ygnacio. (*Id.* at 11:00–01.) But this is also a common area for alien smuggling. (*Id.* at 10:59.) Based on his training and experience, Agent Gonzalez testified that in Zapata, there are many roads to and from the Rio Grande River that allow for “easy access” for alien, narcotics, and weapons smuggling. (*Id.* at 10:58–59.) He further testified that there is no checkpoint from Laredo to the Rio Grande Valley, and that Highway 83 is used to “bypass border patrol checkpoints” for this reason. (*Id.* at 11:00.)

On the day of the stop, at approximately 9:30 a.m., Agent Gonzalez was stationary in his

marked Border Patrol vehicle, when he noticed a grey Chevrolet Traverse traveling northbound on Highway 83, near San Ygnacio. (*Id.* at 11:02.) Agent Gonzalez testified that, based on his training and experience, sports utility vehicles (“SUVs”) like the Defendant’s Traverse are often used in alien smuggling because of the cargo space, but SUVs are not the only type of vehicle that is used. (*Id.* at 11:03.)

Agent Gonzalez observed that Defendant’s vehicle was traveling at a high rate of speed in comparison to other vehicles on the highway and “way above” the speed limit. (*Id.* at 11:05.) As Defendant’s vehicle passed, Agent Gonzalez saw that it was “heavily dirty,”¹ with a “dark tint,” and “the driver seated low in their seat.” (*Id.* at 11:06.) Based on his experience, Agent Gonzalez was aware that vehicles coming to and from the river, traveling on the dirt or caliche roads, tend to get dusty or dirty. (*Id.* at 11:09.) He also agreed, however, that the particular area of South Texas has many ranches and dirt roads that can cause vehicles in the area to become dusty. (*Id.* at 11:32.)

To further observe the vehicle, Agent Gonzalez began to follow Defendant northbound on Highway 83. (*Id.* at 11:07) He testified that Defendant’s vehicle then accelerated and swerved in the lane to gain distance. (*Id.*) When Agent Gonzalez caught up to Defendant’s vehicle, he saw that the Defendant “hunkered down” where he “could just see a head sticking up.” (*Id.*) Based on his training and experience, this signaled to Agent Gonzalez that the driver was attempting to conceal themselves from his view (*Id.* 11:07–08.)

He also noticed fingerprints on the bottom and middle of the vehicle’s tailgate. (*Id.*) This,

¹ Agent Gonzalez testified that Defendant’s vehicle was discolored due to dust. (*Id.* at 11:10; *see* Dkt 32, Ex. 1–3). During the suppression hearing, the Government admitted into evidence three photographs of Defendant’s vehicle from the front, rear, and passenger side view. (Hrg. 11:05; Dkt. 32, Ex 1–3.) Upon examination of the exhibits, however, the Court noted that “there was really no dust” on Defendant’s vehicle. (*Id.* at 11:46.)

according to Agent Gonzalez, was indicative of similar characteristics in other cases where illegal aliens or narcotics were discovered inside the vehicle. (*Id.* at 11:09.) Agent Gonzalez then ran the vehicle license plate, which came back to Defendant and another individual—both in Rio Grande City, Texas. (*Id.* at 11:10.)

At the point where Highway 83 transitions from a two-lane to a four-lane highway, Agent Gonzalez was able to move into the fast lane and position his vehicle to the left of Defendant's vehicle ("the driver's side"). (*Id.* at 11:11.) As Agent Gonzalez drove alongside the vehicle, he saw that there were additional fingerprints on the side of the vehicle. (*Id.* at 11:12.) He was unable to observe any rear passengers due to the "excessively dark" tint of the windows nor could he see any front passengers because Defendant had one hand on the steering wheel. (*Id.* at 11:12–13.)

According to Agent Gonzalez, Defendant then "dramatically slammed on the brakes,"² presumably out of nervousness or in an attempt to "deter [his] visual of the vehicle." (*Id.* at 11:13–14.) Agent Gonzalez decelerated to again position his vehicle alongside the Defendant's vehicle, but Defendant "sped up" once more, indicating to Agent Gonzalez that Defendant was attempting to prevent him from a "second look" at the vehicle. (*Id.* at 11:15.)

At this time, Agent Gonzalez performed a traffic stop of Defendant's vehicle. (*Id.*) Based on the interview, he found that Defendant was transporting four illegal aliens. (*Id.* 11:15–16). One person was behind the driver's seat, lying down; two more were behind the secondary passenger seat; and one person was inside the trunk. (*Id.* at 11:16.) In the front passenger seat, there was also a minor child, who is identified as Defendant's twelve-year-old child in the Government's Response (*Id.* at 11:15–16; Dkt. 27.)

² Agent Gonzalez testified that at the time Defendant decelerated, he was driving at approximately 70 miles per hour. (Hrg. 11:14.)

Legal Standard

The Fourth Amendment protects individuals “against unreasonable searches and seizures.” U.S. Const. amend. IV. A traffic stop constitutes a Fourth Amendment seizure, and reasonable suspicion is required to initiate such a stop. *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (noting the legality of traffic stops analyzed under the framework articulated in *Terry v. Ohio*, 392 U.S. 1, 19–20 (1968)); *see also United States v. Valadez*, 267 F.3d 395, 397–98 (5th Cir. 2001) (same).

Specifically, in the context of stops initiated by border patrol agents on roving patrol, the agent must be aware of “specific articulable facts” together with rational inferences from those facts, that warrant a reasonable suspicion that the vehicle is involved in criminal activity, such as transporting undocumented aliens. *United States v. De Jesus Chavez-Chavez*, 205 F.3d 145, 148 (5th Cir. 2000); *see United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Factors to consider in an analysis of reasonable suspicion include: (1) proximity to the border; (2) known characteristics of the area in which the vehicle is encountered; (3) usual traffic patterns on the particular road; (4) the agent's previous experience in detecting illegal activity; (5) information about recent illegal trafficking in aliens or narcotics in the area; (6) particular aspects or characteristics of the vehicle; (7) behavior of the driver; and (8) the number, appearance, and behavior of the passengers. *Brignoni-Ponce*, 422 U.S. at 884–85. No single factor is dispositive. *United States v. Moreno-Chaparro*, 180 F.3d 629, 631–32 (5th Cir. 1998). The reasonable suspicion analysis is a fact-intensive test in which the court looks at all circumstances together to weigh not the individual layers, but the “laminated total.” *United States v. Zapata-Ibarra*, 212 F.3d 877, 881 (5th Cir. 2000) *cert. denied*, 531 U.S. 972 (2000). “Factors that ordinarily constitute innocent behavior may provide a composite picture sufficient to raise reasonable

suspicion in the mind of experienced officers.” *United States v. Jacquinot*, 258 F.3d 423, 427–28 (5th Cir. 2001).

Discussion

The Government relies on the following circumstances in its argument that the investigatory stop of Defendant’s vehicle was supported by reasonable suspicion: the vehicle was first seen approximately one mile from the U.S.-Mexico border; the vehicle was traveling northbound on Highway 83; Defendant was driving at a high rate of speed in comparison to other drivers and the posted speed limit; Agent Gonzalez has eleven years of experience as a border patrol agent; Defendant was sitting low in the driver’s seat; the vehicle was dirty and had dark window tint on the rear passenger windows; Agent Gonzalez observed handprints on the rear of the vehicle and on the side doors; and Defendant “dramatically slammed on the brakes” (Hrg. 11:13–14) and then sped up when Agent Gonzalez pulled his border patrol vehicle alongside the Defendant’s vehicle. (*See* Dkt. 27.)

The Court notes that the Government asserts that Defendant’s vehicle was “heavily dirty” (Hrg. 11:06) and there were fingerprints and handprints visible on the tailgate and sides (*Id.* at 11:08, 11:12). Interestingly, this description of Defendant’s vehicle was not apparent from a review of the Government’s exhibits. (*See id.* at 11:46; Dkt. 32, Ex 1–3.) Regardless, the Court finds the Government’s “totality of circumstances” argument unpersuasive. Each of the *Brignoni-Ponce* factors are discussed in turn below.

A. Proximity to the Border

The Fifth Circuit Court of Appeals has repeatedly held that “proximity to the border, is a ‘paramount factor’ in determining reasonable suspicion.” *United States v. Cervantes*, 797 F.3d 326, 329–30 (5th Cir. 2015); *see also United States v. Garza*, 727 F.3d 436, 441 (5th Cir. 2013);

United States v. Gutierrez-Orozco, 191 F.3d 578, 581 (5th Cir. 1999). For the purpose of supporting an inference as to a vehicle's origins, the Fifth Circuit has recognized a threshold distance of fifty miles from the border. *United States v. Jones*, 149 F.3d 364, 368 (5th Cir. 1998). This benchmark, however, is not a bright line rule. *Id.* "[A] vital element of the *Brignoni-Ponce* test is whether the agent had 'reason to believe that the vehicle [in question] had come from the border.'" *United States v. Garcia*, 732 F.2d 1221, 1223 (5th Cir. 1984) (citation omitted).

Here, it is undisputed Agent Gonzalez first observed Defendant's vehicle approximately one mile from the border (Hrg. 10:58), well within the fifty-mile benchmark established in *Jones*. *See Jones*, 149 F.3d at 368. However, Agent Gonzalez lacked reason to believe that Defendant's vehicle was coming from the border. Agent Gonzalez stated that Defendant's vehicle was "heavily dirty" when he first noticed it traveling on Highway 83. (Hrg. 11:05–06.) He later noticed fingerprints on the tailgate and handprints on the side of the vehicle. (*Id.* at 11:08–09.) The dirtiness, according to Agent Gonzalez, made him suspect that Defendant's vehicle was coming directly from the border because there are many dirt and caliche roads at the river. (*Id.* at 11:09.) And the fingerprints and handprints made him suspect the presence of illegal aliens. (*Id.*)

However, the Government's photographic exhibits failed to corroborate Agent Gonzalez's description of Defendant's vehicle. (*See* Dkt. 32, Ex. 1–3.) There was no immediately visible dirt, dust, fingerprints, or handprints on Defendant's vehicle that would support a finding of reasonable suspicion. (*See id.*) As such, the Court finds that the "proximity to the border" factor does not weigh heavily in favor of reasonable suspicion here.

B. Characteristics of the Area

Agent Gonzalez testified that Highway 83 is used for alien smuggling, (Hrg. 11:00) and

Defendant was traveling on Highway 83 at the time of the stop (*Id.* at 11:02). Indeed, a road's reputation as a smuggling route adds to the reasonableness of an agent's suspicion. *Zapata-Ibarra*, 212 F.3d at 881 (citing *United States v. Aldaco*, 168 F.3d 148, 151–52 (5th Cir. 1999)). But merely being on a road frequently used for illegal activity is insufficient to justify an investigative stop. *United States v. Diaz*, 977 F.2d 163, 165 (5th Cir. 1992); *De Jesus Chavez-Chavez*, 205 F.3d at 148. “[O]therwise, law enforcement agents would be free to stop any vehicle on virtually any road anywhere near the Texas-Mexico border.” *Diaz*, 977 F.2d at 163.

In fact, Highway 83 is the “most direct route” between Laredo and Rio Grande City (Hrg. 11:28–29), and Agent Gonzalez was able to confirm Defendant's vehicle was registered to individuals from Rio Grande City *before* he initiated the stop of Defendant's vehicle. (*Id.* at 11:10.) Therefore, it would not have been inherently suspicious to find a vehicle from Rio Grande City traveling northbound on Highway 83. As such, this factor also does not support reasonable suspicion.

C. Usual Traffic Patterns

To determine whether reasonable suspicion exists, the Fifth Circuit has considered deviations from “usual traffic patterns,” such as traveling at an unusual time of day,³ traveling on roads not generally used by the public,⁴ or driving an uncommon type of vehicle on a particular

³ See, e.g., *Aldaco*, 168 F.3d at 152 (finding relevant agent's observation that “traffic is usually scarce on Highway 85 after eight or nine o'clock in the evening”); *Jacquinet*, 258 F.3d at 429 (finding that traveling before six o'clock in the morning in an area where traffic is typically very light at that time weighs in favor of reasonable suspicion). See *cf. United States v. Olivares-Pacheco*, 633 F.3d 399, 408–09 (5th Cir. 2011) (noting that the Fifth Circuit accords little weight to the fact that a vehicle was traveling during border patrol agents' shift change).

⁴ See, e.g., *United States v. Medina*, 295 Fed. App'x 702, 707 (5th Cir. 2008) (finding that a vehicle driving on private ranch roads that were “not used on a daily or weekly basis” weighed in favor of reasonable suspicion).

road.⁵ Here, the only information Agent Gonzalez provided regarding the usual traffic patterns in the San Ygnacio area was that (1) there are speed limits and (2) usually locals or the population from Zapata drive around that area. (*Id.* at 11:00–01.) When Agent Gonzalez first noticed Defendant’s vehicle, Defendant was traveling at a high rate of speed in comparison to other drivers traveling northbound on Highway 83 and the posted speed limit. (*Id.* at 11:05.) Agent Gonzalez testified that traveling at a high speed was “suspicious behavior” based on his previous experience (*Id.* at 11:07), but he failed to articulate whether that was particularly unusual for the San Ygnacio area. Also missing from the record was any evidence that it was unusual to find vehicles like Defendant’s Chevrolet Traverse traveling on Highway 83 at 9:30 a.m. (*See id.* at 11:02.) *See also United States v. Rangel-Portillo*, 586 F.3d 376, 382 (5th Cir. 2009) (finding no reasonable suspicion where, among other factors, the characteristics of the vehicle and time of the stop were not suspicious). As such, this factor does not support reasonable suspicion.

D. Agent Gonzalez’s Experience in Detecting Illegal Activity

Agent Gonzalez has been a border patrol agent in the Zapata, Texas area for eleven years. (Hrg. 10:57–58.) During that time, he also instructed other agents in checkpoint and vehicle interdiction operations related to alien interdiction or human smuggling. (*Id.* at 10:56–57.) He has personally been involved in approximately one hundred alien smuggling cases. (*Id.*) Overall, the Court found Agent Gonzalez’s experience to be relevant to the present case and his testimony credible. Unfortunately for the Government, this factor alone will not support a finding of reasonable suspicion.

⁵ *See, e.g., United States v. Rodriguez*, 585 F. App’x 307, 308 (5th Cir. 2014) (upholding an investigatory stop in part because the defendant’s “rented Chevrolet Malibu vehicle . . . was not typical of vehicles that utilize [Farm-to-Market Road 2050]”); *United States v. Mackey*, 734 Fed. App’x 227, 232 (5th Cir. 2018) (affirming the district court’s finding of reasonable suspicion where defendants drove sedans on a road trafficked primarily by oil rig tractor trailers and work trucks).

E. Behavior of the Driver

“The driver’s behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion.” *Brignoni-Ponce*, 422 U.S. at 885. But courts have accorded little weight to a driver’s perceived nervousness inferred by eye contact, lack of eye contact, “swerving on the road a little,” or deceleration. *See Zapata-Ibarra*, 212 F.3d at 882 (citing multiple examples).

Agent Gonzalez testified that he “could just see a head sticking up.” (Hrg. 11:07.) Thus, he was unable to observe Defendant’s behavior other than her posture and the way she drove the vehicle. Agent Gonzalez saw Defendant “seated low,” as though “hunkered down,” with one hand on the steering wheel. (Hrg. 11:07–08.) A person who is “seated low” in their seat may do so for various reasons, including posture or personal comfort. Indeed, the Fifth Circuit has held “slouching, alone, may not be a significant factor.” *Gutierrez-Orozco*, 191 F.3d at 582 (citing *United States v. Rodriguez-Rivas*, 151 F.3d 377, 381 (5th Cir. 1998)). The Court does not find that these circumstances taken together support a finding of reasonable suspicion, especially because the other observations regarding the dirtiness of the car and handprints were not readily apparent from the Government’s exhibits. (Dkt. 32, Ex. 1–3.)

Further, the Court does not find the Government’s reliance on Defendant’s dramatic deceleration (Hrg. 11:39) or swerving particularly persuasive (*Id.* at 11:07–08). The Fifth Circuit has recognized that “deceleration in the presence of a patrol car may be completely innocent behavior,” particularly in situations where the driver was speeding when first observed. *Jacquinet*, 258 F.3d at 429; *see also Diaz*, 977 F.2d at 165 (“[T]here is nothing suspicious about a speeding car slowing down after a marked patrol unit turns to follow, with or without flashing lights.”)

Here, Defendant's vehicle was already speeding when it was first observed (Hrg. 11:05.) and continued to accelerate and swerve within the lane (*Id.* at 11:07). To Agent Gonzalez, this suggested that Defendant was attempting to "gain distance." (*Id.*) But it is unclear whether such behavior was a reaction to Agent Gonzalez's presence or Defendant maintaining the high speed at which she was already traveling. Moreover, Defendant promptly decelerated when Agent Gonzalez pulled up alongside her vehicle (*Id.* at 11:13), as would be a natural response for a speeding vehicle upon noticing a marked patrol vehicle. *See Jones*, 149 F.3d at 370 ("When the officer's actions are such that any driver, innocent or guilty, would be preoccupied with his presence, then any inference that might be drawn from the driver's behavior is destroyed."). Considering the totality of Defendant's behavior, this factor does not weigh in favor of reasonable suspicion.

F. Aspects or Characteristics of the Vehicle

The Government argues that there were grounds for reasonable suspicion because SUVs like Defendant's vehicle are often used for alien smuggling due to their cargo space; the vehicle was dirty and had dark window tint on the rear passenger windows; and the vehicle had fingerprints and handprints on the rear and side doors. (Dkt. 27 at 7.)

Courts have held that certain types of vehicles may properly trigger reasonable suspicion given the totality of circumstances. *See, e.g., United States v. Morales*, 191 F.3d 602, 604–05 (5th Cir. 1999) (noting that border patrol agents usually found illegal aliens hiding in the back of a "van or pickup truck"). But the fact that Defendant's vehicle was an SUV alone does not support reasonable suspicion.

Agent Gonzalez also relied on his observation that the car was "heavily dirty." (Hrg. 11:06.) But as discussed above, this perception is simply not supported by the Government's

exhibits. (*See* Dkt. 32, Ex. 1–3.) Even if the car was dirty, the stop occurred during a hot South Texas summer month, in an area surrounded by ranchland. (*Id.* at 11:32.) It therefore would not have been unusual to see a layer of dust on vehicles traveling in that area.

Similarly, the fingerprints and handprints, which were not visible in the exhibits (*See* Dkt. 32; Ex. 1–3), do not support reasonable suspicion without additional evidence. Finally, Agent Gonzalez did not testify as to the significance of the dark window tint on the rear passenger windows, other than that it prevented Agent Gonzalez from being able to observe anyone in the back seat. (*Id.* at 11:12.) As such, and for the foregoing reasons, the “aspects and characteristics of Defendant’s vehicle” factor does not support a finding of reasonable suspicion.

G. Information about Recent Illegal Trafficking in Aliens or Narcotics in the Area, and the Number, Appearance, or Behavior of Passengers.

The Government conceded that there “were no particularized information as to the trafficking in aliens in the area at question” nor was Agent Gonzalez able to view the passengers “until after he stopped the car to conduct the immigration inspection.” (Dkt. 27.) As such, these factors do not support reasonable suspicion.

Conclusion

The Court recognizes that reasonable suspicion requires “considerably less than proof of wrongdoing by a preponderance of the evidence.” *United States v. Castillo*, 804 F.3d 361, 364 (5th Cir. 2015). However, in determining whether an officer acted reasonably, due weight must be given, “not to his inchoate and unparticularized suspicion” but to “specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Terry*, 392 U.S. at 27. When taken in their totality, the circumstances do not amount to reasonable suspicion that justified the roving patrol stop of Defendant’s vehicle on June 12, 2019.

Therefore, Defendant's Motion to Suppress (Dkt. 25) is hereby GRANTED. The evidence obtained as a result of Defendant's detention is hereby SUPPRESSED.

The case is hereby referred to U.S. Magistrate Judge Sam Sheldon for the scheduling of a status conference.

IT IS SO ORDERED.

SIGNED this 16th day of September, 2019.

A handwritten signature in black ink, appearing to read 'D Saldaña', is written over a horizontal line.

Diana Saldaña
United States District Judge